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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/884,434	06/19/2001	Rudy A. Mazzocchi	723.020US1	9942

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EXAMINER

PEFFLEY, MICHAEL F

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 02/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/884,434

Applicant(s)

MAZZOCCHI ET AL.

Examiner

Michael Peffley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-14, 16, 17, 24, 25 and 32-67 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-5, 7-14, 16, 17, 24, 25, 32-46 and 49-67 is/are allowed.
- 6) ☒ Claim(s) 47 is/are rejected.
- 7) ☒ Claim(s) 48 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Applicant's amendment and comments, received December 15, 2003, have been fully considered by the examiner. The following is a complete response to the December 15, 2003 communication.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt ('932) in view of the teaching of Sheldon et al ('602).

The Schmidt reference has been addressed in the previous Office action. Schmidt fails to specifically disclose an entry device having securing mechanisms for securing the entry device to a skull and for securing a trajectory guide which is then used to introduce the probe portion to tissue.

As asserted previously, it is generally well known to use stereotactic devices for securing probes during surgery. Sheldon et al disclose one such stereotactic device which includes a first securing mechanism (10) to secure an entry device to the subject's skull, and a second securing mechanism (see the elements which allow for the vertical adjustment of the position of item 12 in figure 1) to secure the orientation of a trajectory guide (30). The trajectory guide is used to introduce a probe or probes to the desired treatment site.

To have provided the Schmidt system with a stereotactic frame and trajectory guide device as taught by Sheldon et al to allow for the safe and accurate placement of the probe within the desired treatment site would have been an obvious modification for one of ordinary skill in the art.

***Allowable Subject Matter***

Claims 1-5, 7-14, 16, 17, 24, 25, 32-46 and 49-67 are allowable over the prior art of record.

Claim 48 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Independent claims 1, 32 and 37 have been amended to recite that the aneurysm treatment device is released from the probe via axial translation of the probe without lateral motion of the probe. The Schmidt device requires the application of a lateral force in order to release the aneurysm clip from the probe, and is therefore not deemed to meet the limitations of the claims. No suggestion in the prior art has been found to modify the Schmidt device to meet these claimed limitations. Newly added independent claims 53, 55 and 59 include subject matter previously objected to and have been rewritten into allowable form.

***Response to Arguments***

Applicant has provided allowable subject matter into previously rejected independent claims 1, 32 and 37. Applicant has further rewritten previously objected

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claims into independent form in newly added independent claims 53, 55 and 59. All claims dependent from these independent claims are also allowable.

However, applicant has also provided new independent claim 47. This claim is essentially the same as previously rejected claim 1 and includes the further limitation of a trajectory guide. As previously asserted, it is generally well known to provide aneurysm treatment devices such as disclosed by Schmidt with a trajectory guide (i.e. stereotactic device) for safely guiding the device to the intended treatment site. Applicant has provided no arguments with regard to the combination of the Schmidt device with the Sheldon teaching. As such, this rejection is deemed tenable and is maintained.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

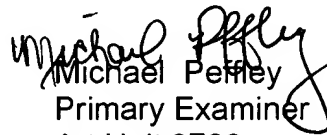
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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Peffley whose telephone number is (703) 308-4305. The examiner can normally be reached on Mon-Fri from 6am-3pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (703) 308-0994. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Michael Peffley  
Primary Examiner  
Art Unit 3739

mp  
February 17, 2004